

# STEPPING INTO THE SUNSHINE WITHOUT GETTING BURNED

The *Extractive Sector Transparency Measures Act (ESTMA)* and Aboriginal Communities

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## PREFACE

**T**he year 2013 was the 250th anniversary of the Royal Proclamation of 1763. The Royal Proclamation is widely regarded as having been one of the cardinal steps in the relationship between Aboriginals and non-Aboriginals in British North America – what eventually became Canada.

A quarter of a millennium later it is our judgment that that relationship has often not been carried out in the hopeful and respectful spirit envisaged by the Royal Proclamation. The result has been that the status of many Aboriginal people in Canada remains a stain on the national conscience. But it is also the case that we face a new set of circumstances in Aboriginal/non-Aboriginal relations. Indigenous peoples in Canada have, as a result of decades of political, legal, and constitutional activism, acquired unprecedented power and authority. Nowhere is this truer than in the area of natural resources.

This emerging authority coincides with the rise of the demand for Canadian natural resources, a demand driven by the increasing integration of the developing world with the global economy, including the massive urbanisation of many developing countries. Their demand for natural resources to fuel their rise is creating unprecedented economic opportunities for countries like Canada that enjoy a significant natural resource endowment.

The Aboriginal Canada and the Natural Resource Economy project seeks to attract the attention of policy makers, Indigenous peoples, community leaders, opinion leaders, and others to some of the policy challenges that must be overcome if Canadians, Aboriginal and non-Aboriginal alike, are to realise the full value of the potential of the natural resource economy. This project originated in a meeting called by then CEO of the Assembly of First Nations, Richard Jock, with the Macdonald-Laurier Institute. Mr. Jock threw out a challenge to MLI to help the Aboriginal community, as well as other Canadians, to think through how to make the natural resource economy work in the interests of all. We welcome and acknowledge the tremendous support that has been forthcoming from the AFN, other Aboriginal organisations and leaders, charitable foundations, natural resource companies, and others in support of this project.

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The town of Schefferville is in the Naskapi and Innu territory in northern Quebec. Wikipedia photo

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Island Lake First Nations Community. Wikipedia photo

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# EXECUTIVE SUMMARY

It is difficult to argue against the value of transparency, especially in contexts where large amounts of money are changing hands between business and government. Internationally, the extractive resource sector has contributed enormously to the income and wealth of many countries, but in others, failed policy frameworks and corruption have meant it has led only to diverted wealth in the hands of certain private interests. Organizations such as Transparency International have for years argued for legislation requiring the disclosure of payments by industry. *The Extractive Sector Transparency Measures Act (ESTMA)*, which was passed by Canada's parliament with some controversy in 2014, is one example.

Concerns about the impact of the new law on industry agreements with Aboriginal governments were dampened when its application was delayed for these agreements until June 2017. But June 2017 is rapidly approaching and it is important to assess how the bright sunlight of ESTMA will affect a system that has brought significant levels of prosperity to many Indigenous communities.

Impact and benefit agreements (IBAs) are a major way in which industry has worked in partnership with communities, and they have become widespread. There are now hundreds of these agreements in place with respect to various resource sector developments. In return for certainty on a proposed project, they often confer a range of benefits on affected communities including royalty and lease payments; environmental management schemes; business development, training, and employment opportunities; infrastructure; and, social development and cultural retention programs. They have some challenging aspects but have also offered many tangible benefits.

Critics among both industry and Indigenous leaders are worried that revealing their agreements with business would harm their ability to negotiate IBAs and could lead to a reduction in federal funding due to the increase in "own-source revenue". Clarence Louie, the well-known chief of the Osoyoos Indian Band, puts the concern directly: "Our corporate information, our self-generated income, is none of the federal's or provincial's or the taxpayers' business".

Because *ESTMA* is part of a significant international movement on transparency in the resource sector, we do not see any prospect that it will simply go away. Nor do we see much likelihood that its application to Aboriginal governments will be removed from *ESTMA*.

Some in the public might see the scope of payments to a particular community and wonder why it is also receiving federal funding when it appears to be already receiving significant income. However, if that is the conversation *ESTMA* fosters, it will have the effect of allowing negative impacts on communities without the compensation provided by IBAs. If the existence of such payments is allowed to take away from other funding that the community would otherwise have received, the effectiveness of the compensation is undermined.

It should be noted that *ESTMA* also has the potential to benefit Indigenous communities by removing constraints created by strict confidentiality clauses. When communities are unaware of the benefits received by other communities in like circumstances, they have no opportunity to learn from these negotiations and may have no indication of what the proponent is actually willing to offer. An examination of the implications of the *Extractive Sector Transparency Measures Act* for Indigenous communities leads to the following recommendations:

- All parties should be making effective use of the time that remains to consider all implications and to prepare for fallout that could result from disclosure.

*ESTMA is part of an international movement toward transparency and will not simply go away.*

- There is ongoing work to do to clarify the exact scope of the concept of Aboriginal “governments”.
- The federal government should issue a clearer policy statement, or even add a statutory provision, committing not to cut government funding to communities based on figures disclosed under *ESTMA* where payments are compensatory in nature.
- Industry players should be proactive in dealing with Aboriginal communities with whom they have partnerships through IBAs so as to discuss the upcoming *ESTMA* disclosures.
- Aboriginal community leadership needs to be engaged with grassroots members to make them aware of forthcoming *ESTMA* disclosures and help with understanding its implications.
- In some situations with IBAs that were confidential mainly to protect financial information, industry players and Aboriginal communities should consider whether full disclosure of the IBA might be an appropriate route.
- Journalists must keep in mind that circumstances for IBAs vary and the mere numbers disclosed under *ESTMA* may not present a clear picture.

The policy work needs to begin now to ensure that industry and Indigenous communities don’t get burned when they step into the sunshine in June 2017, merely a year away.

## SOMMAIRE

On peut difficilement s’opposer à la valeur de transparence, en particulier dans les situations où des sommes d’argent importantes passent des mains des entreprises aux mains des gouvernements. Sur le plan international, les industries extractives ont apporté une énorme contribution aux revenus et au bien-être économique dans de nombreux pays, mais dans certains autres, les cadres politiques déficients et la corruption ont fait en sorte qu’elles n’ont servi qu’à détourner la richesse vers certains intérêts privés. Des organisations telles que *Transparency International* préconisent depuis des années la mise en œuvre d’une réglementation qui obligerait l’industrie à divulguer les paiements qu’elle verse. C’est dans ce contexte que le Parlement du Canada a adopté en 2014 la *Loi sur les mesures de transparence dans le secteur extractif (LMTSE)*, suscitant du même coup une certaine controverse.

Les préoccupations quant à l’impact de cette nouvelle loi sur les ententes conclues entre l’industrie et les gouvernements autochtones se sont atténuées lorsque son application a été remise à juin 2017 dans ce cas particulier. Mais comme juin 2017 arrive à grands pas, il est important d’évaluer comment un système qui a rehaussé plusieurs fois le bien-être de nombreuses communautés autochtones résistera aux vents forts de la *LMTSE*.

C’est principalement par le moyen des ententes sur les répercussions et les avantages (ERA) que l’industrie établit des partenariats avec les collectivités, et celles-ci se sont répandues. Il y en a maintenant des centaines en place pour divers projets de mise en valeur des ressources. En échange de certitude à l’égard d’un projet, les ERA confèrent souvent une gamme d’avantages pour les populations touchées : redevances et loyers, schémas de gestion environnementaux, développement des affaires, formation et possibilités d’emploi, constructions d’infrastructures et programmes de développement social et de conservation du patrimoine culturel. Certains de leurs aspects sont épineux, bien qu’elles aient également offert de nombreux bénéfices tangibles.

Certains opposants à la loi parmi les dirigeants de l’industrie, comme parmi les chefs autochtones, craignent que la divulgation de leurs ententes ne nuise à leur capacité d’en négocier de nouvelles



ou ne mène à une réduction du financement fédéral en raison de l'augmentation des « revenus de source propre ». Clarence Louie, chef bien connu de la bande indienne d'Osoyoos, formule cette position de façon tout à fait franche et directe : « Ni le fédéral ni le provincial ni les contribuables n'ont à se mêler de nos données d'entreprise et de nos revenus autogénérés ».

La *LMTSE* faisant partie d'un important mouvement international en faveur de la transparence dans le secteur des ressources, nous estimons qu'elle est peu susceptible d'être retirée de l'ordre du jour. Selon nous, il est également peu probable que les gouvernements autochtones soient soustraits de son application.

La *LMTSE* fait partie d'un mouvement international en faveur de la transparence qui n'est pas appelé à simplement disparaître.

Certains membres du public, en voyant la taille des paiements versés à une population en particulier, pourraient se demander pourquoi cette dernière reçoit également un financement fédéral puisque ses revenus paraissent déjà importants. Or, si c'est ce genre de discussion qui est mené au sujet de la *LMTSE*, elle aura pour effet d'entraîner des incidences négatives sur les populations se trouvant privées de l'indemnisation prévue par les ERA. Si l'existence de tels paiements annule un financement qui serait versé à la population en d'autres circonstances, l'efficacité des mécanismes d'indemnisation est compromise.

Il faut souligner que la *LMTSE* pourrait également procurer des avantages aux communautés autochtones en supprimant les contraintes engendrées par les exigences strictes de confidentialité. Lorsque les unes ignorent l'importance des bénéfices tirés par les autres dans des circonstances analogues, elles n'ont pas la possibilité de tirer des leçons de ces négociations ni même, peut-être, d'être informées de ce que les promoteurs sont réellement disposés à offrir. Notre examen des incidences de la *Loi sur les mesures de transparence dans le secteur extractif* sur les communautés autochtones mène aux recommandations suivantes :

- Toutes les parties devraient utiliser efficacement le temps qui reste pour étudier toutes les conséquences et se préparer aux répercussions négatives pouvant découler des divulgations de renseignements.
- Il y a du travail à faire en parallèle pour préciser la portée exacte de la notion de « gouvernement » autochtone.
- Le gouvernement fédéral devrait élaborer un document politique plus clair, ou même ajouter une disposition législative, témoignant de son engagement à ne pas retirer son financement aux collectivités en raison des renseignements divulgués en conformité avec la *LMTSE*, qui comprennent des paiements compensateurs de par leur nature.
- Les intervenants dans l'industrie devraient prendre l'initiative d'échanger avec les communautés autochtones avec lesquelles ils ont conclu des partenariats par le biais des ERA, afin de discuter des divulgations de renseignements à venir dans le cadre de la *LMTSE*.
- Les dirigeants autochtones doivent inciter les membres de leurs communautés à prendre connaissance des exigences de divulgation à venir dans le cadre de la *LMTSE* et les aider à en comprendre les incidences.
- Les intervenants de l'industrie et les communautés autochtones devraient se pencher sur la pertinence des divulgations complètes dans les circonstances particulières où la confidentialité des ERA visait principalement à protéger des renseignements financiers.
- Les journalistes doivent garder à l'esprit que les circonstances entourant les ERA varient de l'une à l'autre et que les chiffres communiqués dans le cadre de la *LMTSE* sont susceptibles de ne pas présenter un portrait définitif.

Le travail politique doit maintenant commencer afin que l'industrie et les communautés autochtones puissent affronter les bourrasques qui s'annoncent pour juin 2017, soit dans à peine un an.

*LMTSE fait partie d'un mouvement international en faveur de la transparence qui n'est pas appelé à simplement disparaître.*

# INTRODUCTION

Unusually for what some would see as a piece of rather technical resource sector legislation, the *Extractive Sector Transparency Measures Act (ESTMA)* generated a great deal of controversy when Parliament considered it in 2014.<sup>1</sup> This was notably because of fears about its implications for impact and benefit agreements (IBAs) between industry and Aboriginal<sup>2</sup> communities (for an example, see Hathout 2014).

Yet, *ESTMA* has now entered into force with little fanfare, perhaps because the government ultimately implemented a two-year delay on its application to payments made to Aboriginal governments. Companies are now engaging in disclosure of payments made during 2015 to various levels of government in Canada, including taxes and royalties. And *ESTMA*'s application to payments made to Aboriginal governments is now rapidly approaching – also with less attention than previously – with payments made by resource sector companies to Aboriginal governments in June 2017 onward subject to the disclosure requirements.<sup>3</sup>

In this paper, we explore what *ESTMA* means for IBAs and, more broadly, for interaction between the resource sector and Aboriginal communities. We survey the past and ongoing discussion on *ESTMA*'s implications for this interaction. And we make a number of recommendations for successful management of the challenges that we see ahead.

*Payments made by resource sector companies to Aboriginal governments in June 2017 onward are subject to the disclosure requirements.*

In undertaking such a discussion, we participate in the Macdonald-Laurier Institute's ongoing series of papers on Aboriginal Canada and the natural resource economy. Developments in the resource sector have met with protests from a variety of different groups, including some concerned with environmental impacts and some with concerns about negative impacts on Indigenous communities from resource development. At the same time, many Indigenous peoples are enthusiastic to participate in the natural resource economy and to help build an economically prosperous Canada in doing so. Obviously, Aboriginal communities seek certain protections and bring sometimes different values to the table. But the potential offered by the natural resource economy for Indigenous peoples is enormous. Some Aboriginal communities are deriving tens of millions of dollars a year in revenue for their

communities from natural resource development,<sup>4</sup> and the natural resource economy has the potential in the coming years to provide tens of thousands of jobs.<sup>5</sup> And the involvement of Indigenous peoples in the natural resource economy, if built on solid policy foundations, could mean a lot for them and for Canada generally.<sup>6</sup>

In this paper, we examine *ESTMA*, one specific piece of legislation that could affect this interaction significantly. In essence, *ESTMA* requires transparency in payments made by large resource sector companies to governments. Internationally, the extractive resource sector has contributed enormously to the income and wealth of many countries. However, in some countries, there are worries that extractive resource development has led largely to diverted wealth in the hands of certain private interests, due to failures in policy frameworks and corruption issues. Organizations like Transparency International have worked for years on related anti-corruption issues and have argued for legislation like *ESTMA* around the world.<sup>7</sup>

These broader origins of *ESTMA* distinguish it to some extent from other transparency and accountability aspects of the Harper government's policy agenda. Other transparency legislation, notably the *First Nations Financial Transparency Act* on transparency in First Nations' finances, were subject to controversy and have effectively been suspended in application by the Trudeau government.<sup>8</sup> But *ESTMA* is different in being the Canadian face of a broader international movement



toward transparency in the context of the extractive resource industry. Both the United States, in rules accompanying section 1504 of the Dodd-Frank reforms of Wall Street, and the European Union, in amendments to the European Union Accounting and Transparency Directives (Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, EU O.J. L 182/19 (26 June 2013)), have implemented similar requirements.

The European requirements are now in force, with EU member states meant to implement them domestically by July 2015 for reporting to commence in 2016.<sup>9</sup> The implementation of these rules in the United States was slowed by a lawsuit that actually vacated a rule put forward in 2012, but the Securities and Exchange Commission has moved to propose a modified rule that achieves the same effects and that will presumably be in effect soon.<sup>10</sup>

Within Canada, the province of Quebec has established its own parallel transparency regime. It passed similar legislation in October 2015, with the first annual statements due for the 2016 fiscal year in early 2017 (An Act respecting transparency measures in the mining, oil and gas industries). However, as with *ESTMA*, the implementation with respect to payments to Aboriginal governments was delayed to apply only to those from mid 2017, with the first reporting on them due in 2018. The Quebec legislation essentially tracked the federal legislation but sought to “occupy the field” from a constitutional perspective and avoid seeming to cede any control over natural resources to federal legislation. Presumably to simplify compliance, though, it followed the same delay on reporting of payments to Aboriginal governments as the federal law did.

Discussion of *ESTMA* in 2014 and 2015 was marked by expressions of concern about its possible impacts in the context of payments to Aboriginal communities. Many Aboriginal communities have entered into impact and benefit agreements with resource sector companies, and they worried that confidential information concerning these IBAs could become public.

IBAs have received increased attention in recent years. In essence they are agreements between industry and a community to provide socio-economic benefits to the community either to offset impacts and/or to distribute some economic participation in a resource project to the community.<sup>11</sup> In the context of typical IBAs with Aboriginal communities in Canada, these benefits may include (but are not limited to): provisions for royalty and lease payments; environmental management schemes; dispute resolution and arbitration processes; support for community-based business development; education, training, and employment opportunities; infrastructure; and social development and cultural retention programs. In return, industry seeks certainty, often achieved through a so-called “support clause” under which the community agrees to support the development and to consider that it has met applicable legal requirements such as those associated with the duty to consult.<sup>12</sup>

IBAs have been a major way in which industry has worked in partnership with communities, and they have become widespread. Indeed, in Canada, IBAs “have been negotiated in relation to every major mine proposed or developed since the late 1990s” (Cameron and Levitan 2014, 25). There are now hundreds of IBAs in place with respect to various resource sector developments.

Because the terms of IBAs are normally confidential and because they could include payments that would be subject to reporting under *ESTMA*, some have expressed concerns. A number of comments emerged prominently in May 2015, with both industry and Aboriginal leaders arguing that there had not been enough consultation on *ESTMA*’s impacts on IBAs and the interests of Aboriginal peoples.

Pierre Gratton, President and CEO of the Mining Association of Canada, expressed these concerns

*The terms of IBAs are normally confidential and could include payments that would be subject to reporting under ESTMA.*

and explained that Aboriginal communities were concerned that their funding might be reduced once the federal government had access to information on funds they received from extractive sector resource companies (Scrimshaw 2015a).

This sort of concern likely stemmed from perspectives on federal policy on “own-source revenue” received by self-governing Aboriginal communities. This policy has not been stable over time, and older policies did mandate some reductions in federal transfers to self-governing communities receiving own-source revenue. The government updated its policy on own-source revenue in July 2015 to try to make clear the limited circumstances in which reductions to federal transfers would apply (Aboriginal Affairs and Northern Development Canada 2015). However, perceptions that there could be reductions had some potential basis to them in past policies.

Own-source revenue is very significant for some Aboriginal communities, and a recent think tank study has shown that some communities are actually generating more than \$100 million a year in own-source revenue, sometimes several multiples the amount of federal transfer payments they are receiving (Bains and Ishkanian 2016). That said, these figures differ dramatically between different communities.

In other reactions to the legislation from Aboriginal communities themselves, chiefs like Roger Augustine, AFN regional chief for New Brunswick and Prince Edward Island, and Ontario regional chief Stan Beardy raised concerns about lack of consultation (Scrimshaw 2015b). Clarence Louie, the well-known chief of the Osoyoos Indian Band, puts the concern directly: “Our corporate information, our self-generated income, is none of the federal’s or provincial’s or the taxpayers’ business” (Scrimshaw 2015a).

In light of the controversy, the federal government modified *ESTMA* so as to apply to payments to Aboriginal governments commencing only in mid 2017. But 2017 is coming. Our paper tries to untangle some of the implications in order to make policy recommendations.

Because *ESTMA* is part of a significant international movement on transparency in the resource sector, we do not see much prospect that it will simply go away. Nor do we see any likelihood that its application to Aboriginal governments will be removed from *ESTMA*. That is present in *ESTMA* because Aboriginal governments *are* governments. Governments are required to bear the responsibilities of government, which includes various types of public accountability. However, there are some special issues that arise here that need further explanation.

## UNDERSTANDING THE BASIC LEGAL EFFECTS OF *ESTMA*

The basic rules in *ESTMA* require reporting by *entities* that meet certain *criteria* on *payments* to certain types of *payees*. Understanding *ESTMA*’s basic effects requires understanding how it defines each of these terms. We will explain those definitions here while also including the sections of the statute so readers can see the precise definitions.

*Entities* are basically industry players that are involved in the commercial development of oil, gas, or minerals. In order to maximize accountability and minimize ways around the statute, entities include those controlling other entities engaged in such development. Thus, an entity is defined

under section 2 of *ESTMA* as:

a corporation or a trust, partnership or other unincorporated organization:

- (a) that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere; or
- (b) that controls a corporation or a trust, partnership or other unincorporated organization that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere.

Note that it is the industry entity that reports. *ESTMA* does not impose any direct obligations on Aboriginal communities themselves. Nor does it give them any direct opportunity to engage in reporting or to follow best practices developed on transparency within some Aboriginal governments. The reporting obligation is on industry, though it has effects on Aboriginal communities in the process.

There are *criteria* on what entities are subject to reporting. These are mainly to focus on public companies and on large companies, so small, privately held companies may avoid the extensive reporting requirements. One implication is that some mineral exploration activity financed through private equity, which has become increasingly common in current mining industry conditions, may escape the application of the statute. Section 8 sets out the entities to which *ESTMA* applies:

- (a) an entity that is listed on a stock exchange in Canada;
- (b) an entity that has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:
  - (i) it has at least \$20 million in assets,
  - (ii) it has generated at least \$40 million in revenue,
  - (iii) it employs an average of at least 250 employees; and
- (c) any other prescribed entity.

The *payments* at issue are those that amount to more than \$100,000 during an entity's financial year (ss 9(1), 9(2)(a), 9(2)(b)). Payments can be monetary or in-kind and are those "in relation to the commercial development of oil, gas or minerals" (s. 2). Unlike in the EU framework, these payments do not include those made in the context of forestry development; the reasons for that differing choice are not clear and may warrant further study.

The types of payments covered include a list of particular types of payments that are oriented toward the various kinds of payments that might be made to governments. These are:

- (a) taxes, other than consumption taxes and personal income taxes;
- (b) royalties;
- (c) fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licences, permits or concessions;
- (d) production entitlements;
- (e) bonuses, including signature, discovery and production bonuses;
- (f) dividends other than dividends paid as ordinary shareholders;
- (g) infrastructure improvement payments; or
- (h) any other prescribed category of payment. (*ESTMA* s. 2)

The *payees* in question are essentially governments. However, *ESTMA* defines *payees* in more detail,



again so that there cannot be structures developed to avoid *ESTMA*'s application. Thus, a payee is:

- (a) any government in Canada or in a foreign state;
- (b) a body that is established by two or more governments;
- (c) any trust, board, commission, corporation or body or authority that is established to exercise or perform, or that exercises or performs, a power, duty or function of government for a government referred to in paragraph (a) or a body referred to in paragraph (b); or
- (d) any other prescribed payee. (*ESTMA* s. 2)

Payees also include Aboriginal governments. In particular, *ESTMA* includes as a payee “an Aboriginal government in Canada” and bodies “established by two or more Aboriginal governments in Canada”. However, this was subject to the delayed application clause so that *ESTMA* does not apply to payments to these payees until two years after *ESTMA* comes into force (s. 29).

*It is clear the reporting requirements will affect both Indigenous communities and industry.*

It is important to note that *Aboriginal government* was not defined in *ESTMA*, so it has been unclear if the provisions will apply only to First Nations with self-government agreements (SGA) or if the scope will be broader (Abouchar and Petersen 2014). However, after consultations undertaken by the federal government on the development of standards for *ESTMA*, Natural Resources Canada (2014) proposed that the application should be to the following types of Aboriginal payees:

Aboriginal organizations or groups with law-making power and/or governance mechanisms related to the extractive sector (i.e., mining, oil and gas); provincially or federally incorporated Aboriginal organizations that undertake activities in the extractive sector on behalf of their beneficiaries; [and] Aboriginal organizations or groups that are empowered to negotiate legally binding agreements (e.g., impact benefit agreements) on behalf of their members.

The scope of *ESTMA*'s application, therefore, has the potential to be much broader than covering only those communities with a self-government agreement.

Even if *ESTMA* applied only to payments to communities with self-government agreements, numerous communities would be affected. Dozens of communities have self-government agreements with the federal government, and major land claims agreements and modern treaties have also established Aboriginal governments (Aboriginal Affairs and Northern Development Canada 2014). *ESTMA* may also apply to payments to the approximately 100 First Nations that have opted into the First Nations Land Management Regime, which provides “sectoral” self-government (Aboriginal Affairs and Northern Development Canada 2014; Aboriginal Affairs and Northern Development Canada 2013). Considering that the Government of Canada has specifically stated that “[p]ayments to Aboriginal entities (to be defined) will be captured, including relevant payments included in Impact Benefit Agreements,” (Natural Resources Canada 2014, 5) it is clear the reporting requirements will affect both Indigenous communities and industry.

The complexity of the definitions we have outlined here, and the uncertainties that attach to some of them, highlight the very significant legal and accounting work that arises from *ESTMA*. There will be various uncertainties to argue about, and there are sometimes still ways of structuring arrangements so as to avoid *ESTMA*. We will return to that point when we consider some of the implications and recommendations.

# PRACTICAL EFFECTS ON IBAS

At a simple level, *ESTMA* changes the legal environment for IBAs. Julie Abouchar and Nicole Petersen, two environmental lawyers, made this simple point in November 2014, saying that the mandatory disclosure of payments “will alter the current practice of confidential negotiated agreements between resource companies and Aboriginal communities about exploration and resource extraction in their traditional territories.” The question, of course, is in what ways current practices will be altered. One way of trying to understand that is through surveying some more of the commentary on *ESTMA* and IBAs, which has largely been in industry publications or media commentary more than in scholarly journals.

Some industry comment has simply been to note the extensive implications for IBAs. According to Kevin O’Callaghan and Martin Thiboutot (2014) of Fasken Martineau DuMoulin LLP, a law firm that represents mining and resource development companies, “[t]he disclosure obligation and related requirements [of *ESTMA*] would apply to all entities listed on a stock exchange in Canada, which corresponds to nearly 60% of the world’s mining companies.” Their implication is that if any of these companies provide benefits to Aboriginal governments in excess of \$100,000, and those payments fall into the defined “category of payments,” *ESTMA* will apply so as to require disclosure of that information to the federal government and eventually the public. *ESTMA* reports filed by resource companies required to report are ultimately published on the Natural Resources Canada website, so as to provide full transparency.

The Canadian Association of Petroleum Producers expressed some concerns in 2014, noting as follows:

in respect of the proposed inclusion of payments to Aboriginal entities, . . . the mandatory reporting obligation might significantly undermine the trust and goodwill developed between industry and Aboriginal entities over time at a particularly sensitive juncture when considering the number of significant infrastructure and other projects currently proposed and vital to ensure export market diversification for Canadian energy resources. (Chatwin and Grbešić 2014)

Considering how *ESTMA* requirements impact trust and goodwill is a very important aspect, and something to which we will return in the last section.

Some general arguments for confidentiality in IBAs have been made over the years by industry proponents who are concerned with the disclosure of sensitive financial information regarding the provision of benefits such as profit and equity sharing, compensation and land-use payouts, and royalties (Fidler and Hitch 2007, 58; Cameron and Levitan 2014, 26). To some degree, some of those arguments have been shared by Aboriginal communities too, who often want to be left alone by all governments,<sup>13</sup> although some are happy to have their own regulatory processes by Aboriginal governments. Industry and Aboriginal groups alike have advocated for the basic moral right to enter into private agreements with one another free from interference by the government or other members of the public, and some consider confidentiality to be a necessary component of IBAs.<sup>14</sup>

These sorts of arguments have long served to keep IBAs outside the public sphere by appealing to the need to protect sensitive information and autonomy of contracting parties. On freedom of contract

*Considering how ESTMA requirements impact trust and goodwill is a very important aspect.*

principles, “parties to these ‘private’ agreements have every *right* to keep them secret” (Kennett 1999, 47, emphasis added). At some level, *ESTMA* interferes with that basic principle in a variety of contexts just as all regulation does.

Much commentary from Aboriginal communities focused on the lack of consultation prior to introduction of the bill (Abouchar and Petersen 2014). The Government of Canada had started an engagement process in July 2013, and from March to May 2014, Natural Resources Canada held meetings in 11 cities, which ultimately received participation from more than 40 Aboriginal governments and national Aboriginal organizations. A significant underlying concern throughout had been that the information obtained “could encourage the federal government to reduce funding for infrastructure and social services in [Aboriginal] communities” (Abouchar and Petersen 2014).

This main worry might have seemed like a partly-grounded worry in the context of ongoing reforms to the federal government’s policy on own-source revenue in Aboriginal communities. Some Aboriginal governments also knew that disclosure of payments to them would disclose very significant amounts of money entering into those communities, which could create complex political dynamics when the public saw these transactions. In any event, this concern was not one that was simply going to go away.

Putting the point in the negotiation context, Courtney Fidler and Michael Hitch (2007) cite Bayer (2007) to explain that the confidentiality of IBA negotiations “avoids placing aboriginal groups and corporations in the position of discussing sensitive financial matters in the presence of the government whose policy it is to claw back any revenues realized through agreements.”

*Industry and Aboriginal groups alike advocate for the right to freely enter into private agreements, and some consider confidentiality to be a necessity.*

The worry is that the federal government may effectively try to offload its funding obligations onto industry, when industry may actually be compensating communities for adverse impacts on the communities. As one commentary notes, “[t]he potential for the federal government to rely on private companies to discharge its funding obligations is troubling. Financial agreements compensate the First Nation for impacts to their territories; they do not serve as a replacement source of public infrastructure funding” (Fidler and Hitch 2007).

This last observation is worth emphasizing. Some in the public might see the scope of payments to a particular community and wonder why it is also receiving federal funding when it appears to be already receiving significant income. However, if that is the conversation *ESTMA* fosters, it will have the effect of allowing negative impacts on communities without compensation. Some payments from industry to communities are compensations for harm that would otherwise be uncompensated. If the existence of such payments is allowed to take away from other funding the community would otherwise have received, the effectiveness of the compensation is undermined.

However, the point may be more complex. Other commentators have suggested that Indigenous communities may seek to prevent the disclosure of financial and other benefits as a means of protecting their right to seek further consultation and accommodation by the government.<sup>15</sup> Without directly saying so, these commentators are implicitly suggesting that some communities could receive – or even deliberately pursue – double compensation for impacts on them. The possibility of double compensation may well offend basic principles of fairness, so this aspect weighs significantly in considerations.

Some might think that the reasons for payments in IBAs could be made even more transparent, making it clear which compensation should not affect government funding. However, there are



further reasons for confidentiality in IBAs, and that confidentiality is actually one reason that some Aboriginal communities have preferred them to environmental impact assessment (EIA) processes. Specifically, where part of what is incorporated is traditional or sacred knowledge of an Indigenous community, there might be reasons for confidentiality so that complete transparency is not an answer to the complex set of issues at stake.

IBAs can incorporate traditional or sacred knowledge of Indigenous communities into project development while protecting that information from public disclosure more effectively than in an EIA process (Prno 2007, 4, 14–15; Fidler 2008, 32; Lukas-Amulung 2009, 63; Robertson 2007, 6). Information obtained in a federal EIA process must generally be shared with the public (*Canadian Environmental Assessment Act, 2012*). Where a federal EIA is mandated by the *CEAA 2012*, an EIA “may take into account community knowledge and Aboriginal traditional knowledge” (s. 19(3); see also Lukas-Amulung 2009, 35.). If the proposed project requires oversight by a review panel, that panel will conduct the EIA and hold hearings to assess a project’s impacts and mitigation measures (*CEAA 2012*, s. 43). That said, if disclosure of traditional or sacred knowledge gathered by the panel would cause “specific, direct and substantial harm” to a witness, or “specific harm” to the environment (s. 45(3)), the panel may make an order that “the evidence, records or things are privileged and must not, without the witness’s authorization, knowingly be or be permitted to be communicated, disclosed or made available by any person who has obtained the evidence, records or other things under this Act” (ss. 45(4), 45(5)).

An informed EIA process should, therefore, be able to address the impacts of a project on sacred areas, identify mitigation measures to reduce or eliminate those impacts, and provide for the protection of sacred or traditional knowledge. However, questions remain regarding what constitutes “specific, direct and substantial harm.” The standards, as applied in practice, may prove hard to meet and result in unacceptable amounts of risk to communities that want to protect their sacred knowledge. While such questions do not fall within the scope of this paper, there may be perceptions that IBA confidentiality remains a preferred way to protect traditional or sacred information.

However, some commentary has also identified potential benefits to removing some of the confidentiality of IBAs. Thus, aside from the concerns that have been raised and the additional concerns likely to arise with the release of the regulations, it should be noted that *ESTMA* also has the potential to benefit Indigenous communities. When communities are unaware of the benefits received by other communities in like circumstances, they have no opportunity to learn from these negotiations (Fidler and Hitch 2007, 64; see also Robertson 2007, 9). *ESTMA*, therefore, has the potential to “level the playing field among parties who seek to negotiate financial compensation agreements. Those negotiating may benefit by having precedent agreements and financial figures available” (Abouchar and Petersen 2014).

That last note, though, is subject to a qualification. *ESTMA* provides for the disclosure of payments but not for disclosure of the reasons for the payments. *ESTMA* does not mean that precedent agreements will necessarily be available. Legally, it results just in the disclosure of payment figures, with those reading the figures potentially left guessing on the exact reasons for the payments.

Nonetheless, the associated theme from commentary on IBAs is worth emphasizing. Courtney Fidler and Michael Hitch (2007) argue that confidentiality clauses prevent Indigenous communities “from sharing and learning from IBA experiences” (58), leaving communities with “no indication of what

*“Financial agreements compensate the First Nation for impacts to their territories; they do not serve as a replacement source of public infrastructure funding.”*

— Fidler and Hitch 2007

the proponent is actually willing to offer” (64; see also Robertson 2007, 9). Fidler and Hitch (2007) thus suggest that a “*rational function of confidentiality may be to prevent aboriginal groups from sharing and learning from IBA experiences*” (58, emphasis added).

Indeed, Fidler (2008) argues that confidentiality causes “data limitations,” resulting in a “potential for power differential that affects equitable decision-making and the sharing of benefits” (8). Wright and White (2012) add that “since IBAs are not regulated and are kept confidential[,] individual First Nations are largely unaware of the potential benefits that could be included or those that have been included in other agreements with different First Nations. Thus, industry may be in a more advantageous bargaining position” (58).

Significantly, Sandra Lukas-Amulung (2009) found in her research that a “majority of focus group experts agreed that the scope or character of [IBAs] depends mostly upon the developer’s interpretation of corporate social responsibility and local participation” (35), which suggests that “data limitations” may prevent Indigenous communities from influencing the scope or character of IBAs to the extent that they otherwise could.

Some actually have broader concerns about confidentiality and IBAs, expressing concerns about whether IBAs reduce regulation on certain types of projects. This is notably a possibility where IBAs involve replacing more stringent environmental assessment processes (Noble and Birk 2011, 17).

Project proponents have also expressed concerns that can be attributed to confidentiality. During his interviews, Steven Kennett (1999) finds that “[a] problem that sometimes impedes IBA negotiations is a lack of appropriate professional knowledge and intercultural skills at the bargaining table” (47). Kennett (1999) notes, for example, that “a senior mining company executive expressed frustration at the lack of understanding of the mining industry that he observed among many of the representatives of aboriginal organizations and their advisors in IBA negotiations.” Another participant commented “that mining companies sometimes put forward negotiators who lack the experience and cultural sensitivity to deal appropriately with aboriginal people.”

Thus by preventing the sharing of information, confidentiality also prevents Indigenous negotiators from gaining “appropriate professional knowledge” and thorough understandings of the industries that they are dealing with. Further, given that proponents and Indigenous communities often have different cultural backgrounds and may not even speak the same language, allowing communities to discuss resource development in their own languages and cultural contexts might address industry’s concerns regarding “cultural sensitivity” and “intercultural skills.”

That said, some of these observations are just about broader context and do not relate directly to the narrow disclosure provided by *ESTMA*. We now need to turn to more precise implications that draw upon themes from this commentary.

# POLICY IMPLICATIONS AND RECOMMENDATIONS

In some of the commentary, there has been a suggestion that *ESTMA* will have impacts on trust and good will, although those offering such comments have not always explained them. There are several ways in which we could foresee such impacts arising. If payments that were negotiated under past agreements with an assumption of confidentiality come to be disclosed because they are now subject to *ESTMA*, several things could happen.

First, if a particular community is not prepared for the forthcoming disclosure and the company carries out its mandatory disclosure, that may be in breach of the prior agreement, and may have legal consequences or simply consequences in terms of trust in the relationship. Second, once figures are disclosed and published, Indigenous communities may be able to compare payments made to different communities. Third, some in Indigenous communities (and in the public) may get mistaken impressions on these differences, because only certain types of payments are disclosed while others will continue to go undisclosed. Fourth, where community members have been unaware of confidential provisions of which only leadership has been aware, there may be general trust issues generated within particular communities.

In addition, negotiations of further agreements will be taking place under the new environment of *ESTMA* and an awareness that the federal government and the general public will be seeing certain aspects of the agreement, which may have certain general impacts on trust in the negotiating environment. Trust is very important in Indigenous communities in light of the close relationships often at issue and long histories of untrustworthy engagement by governments and others.

In respect of these considerations, we need to think about if there are policy steps that can avoid the undermining of trust that might emerge from some of these phenomena. Without pushing for disclosure of traditional and sacred knowledge, clearer communication about just what a particular IBA's payments resulted from may help with some of the issues that arise. That said, the forthcoming application of *ESTMA* may also expose disparities in past agreements based on different bargaining power that existed across different circumstances, and industry and Aboriginal communities need to be getting ready for potential fallout from that once payments made after mid 2017 are subject to disclosure. *ESTMA* is not specifically designed to disclose past agreements. But it will require that payments made based on past agreements be disclosed when those payments are made after mid 2017.

One of the complexities we noted in the last section is that *ESTMA* requires the disclosure of certain types of payments but not an explanation of why those payments are being made. Where payments are made because of a negative impact on a right, it may look like a community is getting significant amounts of money, when it is essentially just being compensated for harm. There are real worries about the possibility of cutbacks in government funding based on what looks like revenue but is compensation. Although the federal government has suggested that it will not cut funding as a result of sums disclosed as being paid under IBAs,<sup>16</sup> that point has not seemed fully credible to everyone. There has been ongoing worry that the sums of money that will become visible will be an invitation

*Trust is crucial in Indigenous communities in light of the close relationships involved and long histories of untrustworthy engagement by governments and others.*



to federal cutbacks. We need to think about whether there are policy steps that can provide credible reassurances on this front.

Commentary has also hinted at the possibility of some communities effectively receiving double compensation under the current system of confidentiality of IBAs. That point can be easily overstated. Governments are largely not providing a lot of compensation under the duty to consult.<sup>17</sup> Nonetheless, when developing credible policies, which everyone feels assured are likely to be followed, it may be pertinent to take this point into consideration.

Another aspect of *ESTMA*'s focus on disclosure of certain payments and not others is that some types of provisions in IBAs are subject to disclosure as they are carried out and others are not. Some IBAs may be structured differently in ways that could generate perceptions of differences that are not as significant as they appear. For example, some IBAs may provide for more direct payments to the Aboriginal governments involved, which are now subject to disclosure, while others may provide for more contracting commitments with local Aboriginal contractors, which will not be subject to disclosure. Resource revenue sharing agreements with provinces are of course similarly not subject to disclosure. Natural Resources Canada (2014) has expressed the view that some "social payments" are not subject to disclosure, offering examples like funding for arenas or community centres (5), but there might be some debate about that depending on how the payments were actually structured. All the disclosure requirements are on resource sector companies that make payments to Aboriginal governments, but only certain types of commitments are subject to disclosure as payments.

These dynamics may create incentives over time for industry and Aboriginal communities to think differently about the structuring of their agreements, as different regulatory requirements have been applied to some things in the agreements but not to others. Industry may yet find ways to keep some payments confidential by structuring different types of arrangements that are technically outside the scope of "payments" in *ESTMA*, although the room for the government to prescribe further types of payments by regulation may allow it to keep up.

*ESTMA may create incentives for industry and Aboriginal communities to restructure their agreements.*

The penalties that apply to resource sector companies that are wrong on their ultimate interpretation of some provision of *ESTMA* may restrain these attempts in advance. There is even a specific penalty applicable to those who seek to structure payments with the intent to avoid reporting them (*ESTMA*, s. 24(3)). That is a challenging rule and both those who do not follow the statute and those who do are potentially subject to penalties under it.

Nonetheless, there may be changes in what is negotiated in IBAs over time, and it is even possible that some industry stakeholders and Aboriginal communities could be renegotiating some past deals in advance of the impending deadline so as to manage some of the issues that might otherwise have arisen.

Industry does not have any real option of not disclosing many payments. Under *ESTMA*, fines are up to a quarter of a million dollars per day on any ongoing violations (s. 24). Resource sector companies are under major pressure from *ESTMA*. They have no particular ways to challenge the statute in the way Aboriginal communities have challenged transparency requirements applied directly to them, and resource companies will thus end up disclosing their payments to Aboriginal governments.

Industry and Aboriginal governments should be thinking ahead of mid 2017 as to the possible implications at various levels of forthcoming disclosure requirements, not least in terms of the public relations situations that will arise.

These various implications give rise to a number of recommendations:

1. We see the delayed application of *ESTMA* to payments to Aboriginal communities as having given some useful time for all parties to think about implications for IBAs. We do not see *ESTMA* going away in general or from this context, given its interaction with broader international policy and the negative symbolic implications if Aboriginal governments sought to avoid being called “governments”. Our first recommendation is that all parties should be making effective use of the time that remains to consider all implications and to prepare for fallout that could result from disclosure.
2. There is ongoing work to do to clarify the exact scope of the concept of Aboriginal “governments”, and all parties should try to reach common understandings rapidly on such issues as the application of the term to communities under the *First Nations Land Management Act* or, for that matter, the *Indian Act* itself.
3. The prospect of government funding being cut due to IBA payments continues to generate concern and uncertainty. The federal government should issue a clearer policy statement, or even add a statutory provision, committing not to cut government funding to communities based on figures disclosed under *ESTMA* where payments are made to avoid negative impacts from a project or to provide compensation for unavoidable impacts. That statement could draw appropriate distinctions of the limited circumstances in which disclosed figures might appropriately give rise to adjustments. In doing so, it could be more credible on a long-term basis than a generic assurance. There is important policy work for government to do here to provide important reassurances.
4. Industry players should be proactive in dealing with Aboriginal communities with whom they have partnerships through IBAs so as to discuss the upcoming *ESTMA* disclosures. Clearer communications around *ESTMA* reporting may help ease the myths or bad relations that could otherwise arise.
5. Aboriginal community leadership needs to be engaged with grassroots members to make them aware of forthcoming *ESTMA* disclosures and help with understanding its implications.
6. In some situations with IBAs that were confidential mainly to protect financial information, industry players and Aboriginal communities should consider whether full disclosure of the IBA might be an appropriate route. Some companies, such as Cameco in northern Saskatchewan, have published IBAs on the Internet (though without the financial figures), and others may want to consider whether there is any reason to keep certain IBAs confidential once the financial figures are public anyway. However, this recommendation is very context-specific, and it might not apply to all IBAs. Nonetheless, there is a real opportunity here to break down some of the confidentiality of IBAs, which has had disadvantages like those we have referenced in this report.
7. In the lead up to eventual disclosure of figures paid under IBAs, journalists who consider covering *ESTMA* disclosures should seek information about the ways in which the mere numbers disclosed under *ESTMA* may not present a complete picture, so as to ensure that objective reporting does not present a misleading picture. The same point applies in respect of any think tanks or advocacy groups that decide to comment upon figures disclosed under *ESTMA*.

If they are well managed, ongoing relationships between Aboriginal communities and Canada’s natural resource economy have much potential. There are a complex set of considerations at play, obviously, taking into account economic interests, environmental sustainability, and Indigenous rights. In this paper, we have commented on one particularly technical subject, but one that needs more attention than it has been receiving. The implications of upcoming *ESTMA* disclosure in relation to IBAs are profound. Sound policy can minimize negative effects and maximize positive effects.

That policy work must be going on now rather than after it is too late. It is almost 2017.

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## ENDNOTES

- 1 The *Extractive Sector Transparency Measures Act*, enacted by S.C. 2014, c. 39, s. 376, was tabled in Parliament in October 2014 as part of the omnibus Bill C-43 and received royal assent in December 2014.
- 2 The term “Indigenous” is increasingly favoured in place of “Aboriginal” in general and in our own writing. However, legal terminology on these matters is complicated in a number of ways, including through some possibilities that the terms may have slightly different applications within Canada according to some case law. Both the Canadian Constitution and the statute under discussion in this paper use the term “Aboriginal”. Accordingly, in the context of a legal discussion related to these contexts, we have generally used the term “Aboriginal”.
- 3 *ESTMA*, s. 29, provides delayed entry into force with respect to payments to Aboriginal governments but thus also makes entirely clear the application of the statute to those payments.
- 4 See the analysis of communities’ own-source revenue in Ravina Bains and Kayla Ishkanian, 2016, *Government Spending and Own-Source Revenue for Canada’s Aboriginals: A Comparative Analysis*.
- 5 See, e.g., Mining Industry Human Resource Council, 2014, *Canadian Mining Industry Employment, Hiring Requirements and Available Talent 10-Year Outlook* (noting that there are projected needs of 120,000 workers just in mining over the next decade, with the potential for many jobs in regions with largely Aboriginal populations).
- 6 See generally Ken Coates and Brian Lee Crowley, 2013, “New Beginnings: How Canada’s Natural Resource Wealth Could Re-shape Relations with Aboriginal People”; and Canadian Chamber of Commerce, 2015, *Aboriginal Edge: How Aboriginal Peoples and Natural Resource Businesses Are Forging a New Competitive Advantage*.

- 7 See, e.g., Transparency International, 2008, *Enhancing Revenue Transparency in Oil & Gas Company Reporting*; and Transparency International, 2011, *Achieving Greater Disclosure in the Oil and Gas Industry*. These reports are just some later comments on a long-standing issue for Transparency International.
- 8 The *First Nations Financial Transparency Act*, S.C. 2013, c. 7 remains on the statute books, but a December 18, 2015 statement from the Minister of Indigenous and Northern Affairs indicated the federal government's intention not to pursue any enforcement action against First Nations that do not follow the statute.
- 9 In the United Kingdom, for example, the Reports on Payments to Governments Regulations 2014 put the EU requirements into domestic effect.
- 10 The initial rules to implement section 1504 of the *Dodd-Frank Act* were proposed by the Securities and Exchange Commission (SEC) in 2010 and finalized on some aspects in 2012. However, the US District Court for the District of Columbia vacated some parts of these rules as improperly made. In 2014, Oxfam pursued litigation to force the SEC to develop rules. The SEC proposed new rules at its open meeting of December 11, 2015, with comments due over the subsequent months, and a final vote on the rules to be taken in June 2016.
- 11 For some discussions of IBAs, see Laura Wright and Jerry White, 2012, "Developing Oil and Gas Resources on or Near Indigenous Lands in Canada: An Overview of Laws, Treaties, Regulations, and Agreements"; Courtney Riley Fidler, 2008, *Aboriginal Participation in Mineral Development: Environmental Assessment and Impact and Benefit Agreements*; Courtney Fidler and Michael Hitch, 2007, "Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice."
- 12 See discussion in Dwight Newman, 2013, *Natural Resource Jurisdiction in Canada*.
- 13 See, e.g., Glen Coulthard, 2014, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Coulthard envisions the reconstruction of cultural practices but not particularly within governmental structures.
- 14 Krista Robertson, 2007, *Accommodation Agreements*. It is worth noting that this document has been relied on by First Nation communities in the construction of their policy-making, for instance Northern Secwepemc te Qelmucw Leadership Council, 2014, "NStQ Mining Policy", in which Robertson's *Accommodation Agreements* was fully adopted without modification (Appendix "G", section 10).
- 15 "Notwithstanding the inclusion of such "without prejudice" clauses, a First Nation should be aware that if it has entered into an accommodation agreement, the government will attempt to rely on the agreement to demonstrate that it has discharged its legal duty to consult and accommodate, so to that extent, the agreement may not be entirely without prejudice. Further, while such clauses will protect the underlying legal claims of a First Nation, there is the unavoidable reality that a resource extraction or development project will inevitably impact aboriginal rights in practice to some extent" (Robertson 2007, 8).
- 16 A February 2016 Government of Canada Information Sheet on the *Extractive Sector Transparency Measures Act* makes this commitment: "Extractive industry reports on payments to Indigenous governments will not be used as a basis to determine federal funding levels."
- 17 On the very limited accommodation provided by governments, see Dwight Newman, 2016, "Consultation and Economic Reconciliation."





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**The Macdonald-Laurier Institute fills a gap in Canada's democratic infrastructure by focusing our work on the full range of issues that fall under Ottawa's jurisdiction.**

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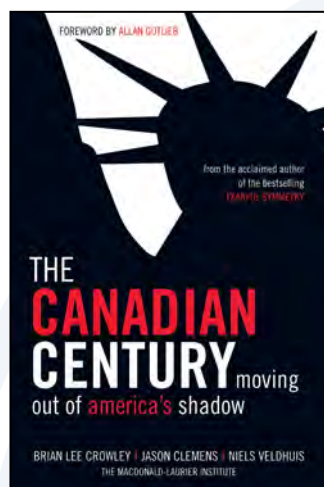
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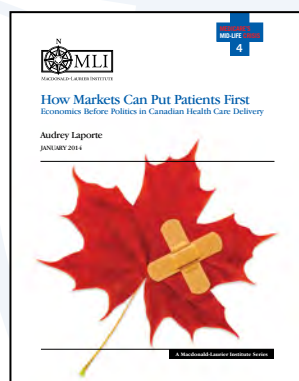
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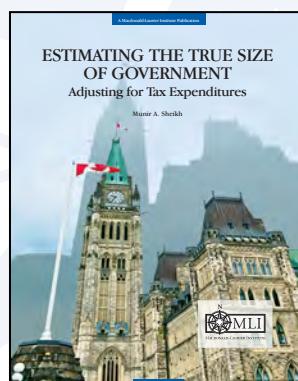
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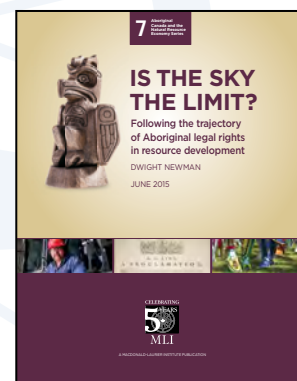
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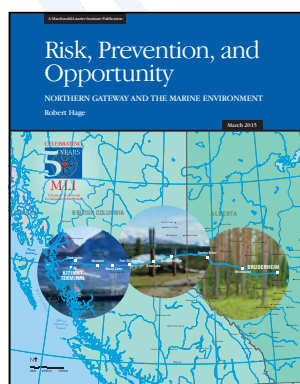
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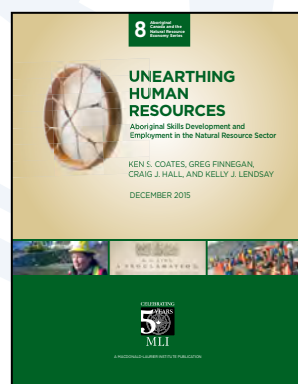
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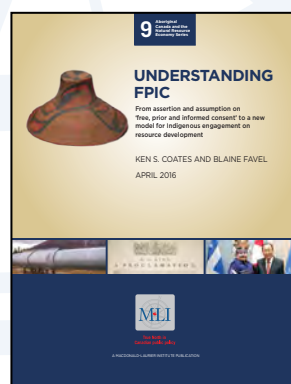
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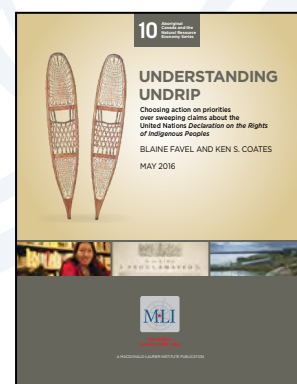
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*The Macdonald-Laurier Institute is an important source of fact and opinion for so many, including me. Everything they tackle is accomplished in great depth and furthers the public policy debate in Canada. Happy Anniversary, this is but the beginning.*

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BARBARA KAY, NATIONAL POST COLUMNIST

*Intelligent and informed debate contributes to a stronger, healthier and more competitive Canadian society. In five short years the Macdonald-Laurier Institute has emerged as a significant and respected voice in the shaping of public policy. On a wide range of issues important to our country's future, Brian Lee Crowley and his team are making a difference.*

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